

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Please cancel claims 3-10, 12 and 31-43 without prejudice to the possibility of filing one or more continuing applications directed to the subject matter recited therein.

Claims 1,2,11, 13-20, 44 and 45 are pending after entry of the amendments set forth herein. Of these, claims 2, 16-19, 21 and 23-30 were withdrawn from consideration by the Examiner.

Claims 1, 11-15, 20 and 22 were examined. Claims 1, 11-15, 20 and 22 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

In the Official Action of January 11, 2006, the Examiner maintained and finalized the restriction requirement that was originally set forth on October 4, 2005.

Rejection of Claims 1, 11-15, 20 and 22 Under 35 U.S.C. Section 102(b) (Nicholas et al.)

Claims 1, 11-15, 20 and 22 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Nicholas et al., U.S. Patent No. 5,967,974. The Examiner asserted that Nicholas et al. discloses a transabdominal access system with upper and lower spreader portions (Fig. 3, #'s 114 and 126) configured to lift the rib cage while depressing the abdomen to produce a substernal space. The Examiner asserted that the lower spreader portion of Nicholas et al. comprises a depressor portion (Fig. 3, # 112) and the upper portion has a hook for contacting the sternal area (Fig. 3, # 132). The Examiner further asserted that Nicholas et al. discloses first and second side portions (Fig. 3, #113 and opposite side) positioned between the upper and lower spreader portions and integrally connected to the upper and lower spreader portions. Finally, the Examiner asserted that the upper spreader portion also has a screw-type retraction mechanism for lifting and retracting the sternum (Fig. 3, # 128).

In response thereto, Applicants respectfully submit that Nicholas et al. does not disclose a transabdominal access system, but rather a surgical retractor assembly that is configured for spreading ribs, to increase the spacing between adjacent ribs, such as when a thoracotomy is made between the ribs, for example, see column 2, lines 15-20.

The “depressor surface” identified by the Examiner as reference numeral 112 in Nicholas et al. refers to a hook member that is adapted to engage a rib and apply a spreading force to it as an adjacent rib that is engaged by hook member 126 is driven away from hook member 112 and the rib engaged thereby. The hook member 112 is not adapted to engage the diaphragm and abdominal organs to depress the same, as the hook member would likely damage these tissues, particularly since the lower edge of hook 112 would be driven into the soft tissues. Instead, the present invention provides a depressor surface that contacts the diaphragm and abdominal organs to provide a broad based application of atraumatic force against these tissue to depress them. It is respectfully submitted that Nicholas et al. fails to disclose or inherently possess a depressor surface adapted to engage the diaphragm and abdominal organs to depress the abdomen, as claimed.

Nor does the retractor assembly of Nicholas et al. lift the rib cage. Rather, hooks 132 and 112 apply opposing forces to adjacent ribs to spread the adjacent ribs further apart, thereby creating a larger opening between the adjacent ribs. However, the rib cage is not lifted during this procedure.

Likewise, the adjustment knob 128 of Nicholas et al. is not a screw type retraction mechanism for lifting the sternum. Rather, knob 128 is turned to retract hook portion 132 away from hook portion 112 until the desired opening is achieved between the adjacent ribs, see column 4, line 62 – column 5, line 2.

In view of the above amendment of claims 1 and 11 and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 11-15, 20 and 22 under 35 U.S.C. Section 102(b) as being anticipated by Nicholas et al., U.S. Patent No. 5,967,974, as being inappropriate.

New claims 44 and 45 have been submitted above and which depend from claims 1 and 11, respectively. These claims recited that the depressor surface is essentially flat. Support for these claims can be found, for example at page 8, paragraph [0040] and throughout the specification and drawings. It is respectfully submitted that Nicholas et al. clearly fails to disclose or suggest this feature, as member 112 is hooked (hook-shaped).

Conclusion

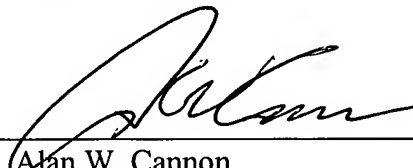
Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-036.

Respectfully submitted,

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Date: 4/11/06

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